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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/422,046	10/20/1999	STEPHEN J. BROWN	HERO-1-1025	5000

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EXAMINER

KALINOWSKI, ALEXANDER G

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 12/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/422,046

Applicant(s)

Brown

Examiner
Alexander Kalinowski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 15, 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 54, 58, 59, and 67-72 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 54, 58, 59, and 67-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 13 6) ☐ Other:

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DETAILED ACTION

1. Claims 54, 58 and 59 are presented for examination. Applicant filed a Request for Continued Examination on 3/20/2001 canceling pending claim 1 and adding new claims 54-66. Applicant filed an amendment on 2/25/2002, canceling claims 55-57 and 60-66 and amending claims 58 and 59. Applicant further filed a request for continued examination and an amendment on 12/5/2002 adding new claims 67-72. New grounds of rejection of claims 54, 58, and 59 and 67-72 are established in the instant office action as set forth in detail below.

Response to Amendment

2. The affidavit filed on 12/5/2002 under 37 CFR 1.131 is sufficient to overcome the Fujimoto reference with respect to independent claim 54. The Examiner withdraws the grounds of rejection of claims 54, 58, and 59 based on 35 USC 102(e).

Information Disclosure Statement

3. The information disclosure statement filed 11/15/2002 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Therefore, since Applicant failed to include copies of foreign patents and listed publications, the Examiner will not consider the listed foreign patents and publications. The Examiner notes that the Applicant need not supply copies of the listed foreign patents or

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publications if Applicant identifies current applications/priority documents which contain a copy of the listed foreign patents and/or publications.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 54, 58 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Fu et al., Pat. No. 4,803,625 (hereinafter Fu).

As to claim 54, Fu discloses a patient interface system for use in collecting and transferring data from a patient to a remote monitoring system (Fig. 1 and abstract), said system comprising:

(a) a patient data input and data receiving means (i.e. home unit)(see Fig. 1) comprising:

(I) a sensor comprising a monitoring unit for monitoring a physiological parameter and producing a measurement (i.e. temp module 86, scale module 84, blood pressure module 92, optional modules 94, ECG module 88)(Fig. 2, and col. 5, line 63 - col. 6, line 8); and

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(ii) an interrogation means comprising a means for creating visual and audio signals (Fig. 2, unit 60, col. 2, voice synthesizer 72 and display unit 68)(col. 5, lines 56-58);

(b) a processing means capable of receiving and storing data from said patient data input means (i.e. CPU 64 and mass storage 80)(Fig. 2, col. 10, lines 28-48);

c) a communication means capable of transferring said processed patient data from said processing means to a remote monitoring system and receiving instructional data from said remote monitoring system (i.e. composite log ... automated communication with the central unit and fast feedback from medical personnel.)(col. 4, lines 47-64).

As to claim 58, Fu discloses the system according to claim 54, wherein said interrogation means further comprises at least one of a keyboard, and a plurality of buttons (Fig. 2, units 74 and 76).

As to claim 59, Fu discloses the system according to claim 54, wherein said communication means comprises at least one of a modem and a serial interface (Fig. 1, unit 62).

As to claim 67, Fu discloses the system according to claim 54, wherein said processing means is further capable of storing a predetermined target value and a series of questions (i.e. temperature is within the reasonable range of 80-120 ... within physician specified expected range

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97.2-100.0 ... schedule a question and answer session in the area of fever symptoms ...)(col. 11, line 45 - col. 12, line 7).

As to claim 68, Fujimoto discloses the system according to claim 67, wherein said processing means is further capable of comparing a sensor measured physiological parameter with said predetermined target value to determine a variance (i.e. temperature is within the reasonable range of 80-120 ... within physician specified expected range 97.2-100.0...)(col. 11, line 45 - col. 12, line 7).

As to claim 70, Fu discloses a patient interface system for use in collecting and transferring data from a patient to a remote monitor (Fig. 1 and abstract), said system comprising:

(a) a patient data receiver(see Figure 1, unit 60) comprising:

(I) a sensor having a monitoring unit for monitoring a physiological parameter and producing an indicia related to the measurement (i.e. temp module 86, scale module 84, blood pressure module 92, optional modules 94, ECG module 88)(Fig. 2, and col. 5, line 63 - col. 6, line 8); and

(ii) a patient interface including a display (Fig. 2);

(b) a processor and a memory containing stored program instructions that are operable by the processor to receive and store data from the patient data receiver (Fig. 2, col. 8, lines 18-26 and col. 10, lines 28-48;

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c) a communications link associated with the processor to transfer the patient data to the remote monitor (i.e. composite log ... automated communication with the central unit and fast feedback from medical personnel.)(col. 4, lines 47-64 and col. 5, lines 47-48).

As to claim 71, Fu discloses the system according to claim 70, wherein said interrogation means further comprises at least one of a keyboard, a plurality of buttons and a microphone (Fig. 2, units 74 and 76).

As to claim 72, Fu discloses the system according to claim 70, wherein said communication means comprises at least one of a modem, a serial interface, a LAN connection and a wireless transmitter (i.e. modem unit 62)(Fig. 1).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over 67 as applied to claim 67 above, and further in view of Fujimoto, Pat. No.5,339,821.

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As to claim 57, Fu does not explicitly disclose the system according to claim 55, wherein said processing means is capable of accepting and storing a new predetermined target value and series of questions from said remote monitoring system.

However, Fujimoto discloses wherein said processing means is capable of accepting and storing a new predetermined target value and series of questions from said remote monitoring system (col. 5, lines 1-13 and line 62 - col. 6, line 9 and lines 18-30). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include wherein said processing means is capable of accepting and storing a new predetermined target value and series of questions from said remote monitoring system as disclosed by Fujimoto within the Fu system for the motivation of diagnosis inquiry effective for the disease or the condition of a particular user can be performed (col. 6, lines 25-30).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. EP 251520 discloses a personal health monitor including sensors for measuring physiological parameters.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Kalinowski, whose telephone number is (703) 305-2398. The

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examiner can normally be reached on Monday to Thursday from 9:00 AM to 6:30 PM. In addition, the examiner can be reached on alternate Fridays.

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If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (703) 305-9588. The fax telephone number for this group is (703) 305-7687 (for official communications including After Final communications labeled "Box AF").

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor, receptionist.

A handwritten signature in black ink, appearing to read "Alexander Kalinowski". The signature is fluid and cursive, with a large, sweeping initial 'A'.

Alexander Kalinowski

Patent Examiner

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December 11, 2002